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10/529,501	12/02/2005	Rafael Astudillo Ley	.76977-316433	5056

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EXAMINER

HORNBERGER, JENNIFER LEA

ART UNIT	PAPER NUMBER
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3734

MAIL DATE	DELIVERY MODE
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06/25/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/529,501	Applicant(s) ASTUDILLO LEY, RAFAEL	
	Examiner JENNIFER L. HORNBERGER	Art Unit 3734	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 March 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 March 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>12/05/2006</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 4, and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by Schuessler et al. (US 2,514,802).

Regarding claim 1, Schuessler et al. disclose an artery holder for use in connection with heart surgery, characterized in that it comprises a gripping and fixing member including two mutually interacting first and second clamp elements (3,9) being arranged for gripping muscle tissue that encloses an artery in connection with a cut end of the artery, and for clamping muscle tissue while simultaneously fixing the artery and exposing said cut end, a spring member (10; col. 1, ln. 52-53) being arranged to actuate the gripping and fixing member with a predetermined spring force in order to achieve said clamping of the muscle tissue, and an actuating member (11) being arranged to actuate the gripping and fixing member against the action of the spring force from the spring member (10) in order to open the clamp elements (3,9) for enabling reception of muscle tissue therebetween and subsequent release of clamped muscle tissue (col. 2, ln. 10-15)

Regarding claim 4, Schuessler et al. disclose an artery holder characterized in that the gripping and fixing member, the spring member and the actuating member are formed by first and second co-operating structural elements (1, 2) being connected to each other by means of an attachment member (8) delimiting the gripping and fixing

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member from the actuating member, said first structural element (2) thereby having the first clamp element (9) and said second structural element (1) having the second clamp element (3).

Regarding claim 5, Schuessler et al. disclose an artery holder characterized in that the first structural element (20) consists of a bent and curved spring plate, including an arc-shaped portion forming as well said actuating member (11) as said spring member (10).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

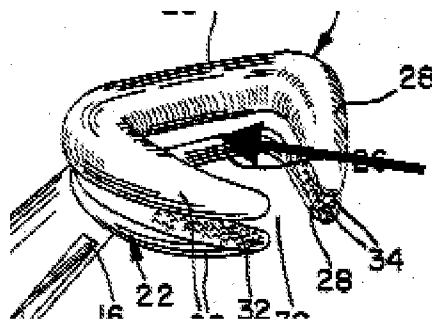
4. Claims 1-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Siegel (US 4,803,983) in view of Schuessler et al. (US 2,514,802).

Regarding claim 1, Siegel et al. disclose an artery holder for use in connection with heart surgery, characterized in that it comprises a gripping and fixing member including two mutually interacting first and second clamp elements (22,24) being arranged for gripping muscle tissue that encloses an artery in connection with a cut end of the artery, and for clamping muscle tissue while simultaneously fixing the artery and exposing said cut end. Siegel et al. fail to disclose a spring member being arranged to actuate the gripping and fixing member with a predetermined spring force in order to achieve said clamping of the muscle tissue, and an actuating member (11) being arranged to actuate the gripping and fixing member against the action of the spring force from the spring member (2) in order to open the clamp elements (3,9) for enabling

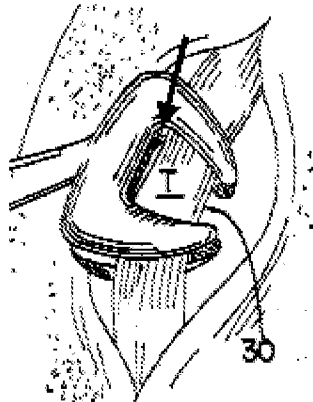
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reception of muscle tissue therebetween and subsequent release of clamped muscle tissue. However, it would have been obvious to substitute the handle members (12, 14) and ratchet members (36,38) of Siegel et al. with the handle, spring, and actuating member (2, 10, 11) of Schuessler et al. because spring and actuating member design of Schuessler et al. offers the same function of constant clamping pressure without control by hand (col. 2, ln. 10-15). Substitution of one known element for another element providing the same function to yield predictable results would have been obvious to one of ordinary skill in the art at the time of the invention.

Regarding claim 2, Siegel et al. disclose an artery holder characterized in that the first clamp element (22), being intended to be located closest to the cut artery end, has a central recess (15) at its end edge, said recess being open forwards and being defined by two tongues (28) projecting forwards, and being arranged for receiving a portion of the artery when inclining the artery holder in relation to the artery, whereas the second clamp element has a straight end edge (see straight end edge designated by the arrow in the figure below) arranged for supporting against the artery during said inclining of the artery holder.



Regarding claim 3, Siegel et al. disclose that the said recess (15) is V-shaped (see V-shape designated by the arrow in the figure below).



Regarding claim 4, Schuessler et al. disclose an artery holder characterized in that the gripping and fixing member, the spring member and the actuating member are formed by first and second co-operating structural elements (1, 2) being connected to each other by means of an attachment member (8) delimiting the gripping and fixing member from the actuating member, said first structural element (2) thereby having the first clamp element (9) and said second structural element (1) having the second clamp element (3).

Regarding claim 5, Schuessler et al. disclose an artery holder characterized in that the first structural element (20) consists of a bent and curved spring plate, including an arc-shaped portion forming as well said actuating member (11) as said spring member (10).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JENNIFER L. HORNBERGER whose telephone number is (571)270-3642. The examiner can normally be reached on Monday through Friday from 8am-5pm, Eastern time.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Todd Manahan can be reached on (571)272-4713. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/J. L. H./
Examiner, Art Unit 3734

jlh
6/11/08

/Todd E Manahan/
Supervisory Patent Examiner, Art Unit 3731